No. 77-953

In the Supreme Court of the United States

OCTOBER TERM, 1977

BUFFALO RIVER CONSERVATION & RECREATION COUNCIL, ET AL., PETITIONERS

v.

NATIONAL PARK SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-953

BUFFALO RIVER CONSERVATION & RECREATION COUNCIL, ET AL., PETITIONERS

v.

NATIONAL PARK SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

The petition for a writ of certiorari was not timely. The judgment of the court of appeals in this civil action was entered on August 3, 1977 (Pet. App. A). The court of appeals denied a petition for rehearing on September 14, 1977 (Pet. App. B). The time for filing a petition for a writ of certiorari was not extended and accordingly the 90-day period provided by 28 U.S.C. 2101(c) for the filing of petitions in civil cases expired on December 13, 1977. The petition was filed on December 15, 1977.

The time limit imposed by 28 U.S.C. 2101(c) is jurisdictional. *Department of Banking* v. *Pink*, 317 U.S.

264; *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 418. The petition for a writ of certiorari therefore should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

FEBRUARY 1978.